From: John D. Hardin
To: Microsoft ATR
Date: 12/13/01 12:12am
Subject: Microsoft Settlement

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Ms. Hesse:

I am writing you to register my comments on the proposed settlement in the Antitrust case of U.S. v. Microsoft. I hope they will be considered.

First off, I want to gently remind you that Microsoft has been found guilty in a court of law of committing crimes, in that they repeatedly violated the Antitrust laws and engaged in many acts of illegal anticompetitive behavior. Please do not lose sight of this fact when considering the settlement.

Microsoft has violated the law, and as such, they must be punished. Punishment involves causing the criminal so much discomfort and pain that they regret having committed their crimes, and do not wish to repeat them. Otherwise it is not punishment. Any settlement where Microsoft does not squeal loudly and publicly about how unfair it is, is not punishment.

Thus I find it disheartening that the Justice Department is even talking to Microsoft about what form the punishment shall take: "Will this hurt too much? Oh, sorry. Okay, how about this?" - would this be done with any other criminal? Where is the justice for the public in this? Please don't forget you are on my side, defending my rights, not Microsoft's.

The terms of the current settlement do little or nothing to punish Microsoft. In effect, Microsoft is being given an opportunity to spend a small portion of their enormous cash reserves to gain a powerful entry into and lock on a new market (that of disadvantaged schools), and is in the process being given protections against the competitors that do the most to threaten their business. How does this punish them?

Any solution to the problem of Microsoft's anti-competitive behavior must strike at the roots of that anticompetitive behavior: their constant and recurring exclusionary practices. These most often take the form of

dictating OEM behavior and engaging in gratuitous blocking of software interoperability.

The current proposed settlement does not effectively address these practices. Charles James' comment that the proposed settlement will "fully and demonstrably resolve" all problems is the worst kind of wishful thinking, and shows that he is not acting in the public's best interest.

1) Microsoft must not be permitted to dictate what software OEMs may or may not install on the computers they build and sell, including most importantly Operating Systems. OEMs must be able to build and ship so-called "Dual Boot" systems without incurring any penalties or punishment from Microsoft. OEMs must also be able to ship computers without any Microsoft operating system at all without incurring any penalties or punishment from Microsoft.

2) Microsoft must be required to publicly, freely and completely document the Application Programming Interfaces (APIs), communications protocols and data storage formats (file formats) used by all products they offer (for example, Microsoft Word and Microsoft Windows itself). In this manner, competing products, including those created by non-commercial sources, will be able to interoperate with Microsoft products. This documentation must be published well before the release of any new product or upgrade, and must be freely available without fee or registration or restriction on use.

It is vitally important that there be no restrictions on the use of this documentation, for if there are any restrictions at all, Microsoft will find a way to use those restrictions to their advantage to stifle fair competition. See Section III(J)(2) and Section III(D) for their current attempt to do this; these sections would have the effect of allowing Microsoft to determine who they deign to provide interoperability information to.

Remember, your goal is to punish Microsoft. Let them compete based on the quality of their products, not the obscurity of their APIs, communications protocols and file formats. Microsoft's ubiquity and ability to produce de-facto "standards" demands that their software interfaces be fully, publicly and freely documented. This is the price of their having a monopoly.

3) Microsoft's products must be held to their documented interfaces. If a Microsoft product is found to use an undocumented extension to an API, communications protocol or file format, then the extension must immediately be documented under the above terms, and Microsoft must be fined and the offending product removed from sale until the documentation has been updated or the use of the extension removed. The same punishment should apply if a product is found to use a wholly undocumented interface.

In conclusion,

The current proposed settlement is a very light slap on the wrist to Microsoft, and if it is enacted then in five years we will be right back where we are now all over again, just as we are now going through yet another penalty phase of yet another anticompetitive practices trial today because of the weak Consent Decree imposed in the mid-1990s. The only difference is in five years Microsoft will be yet larger, more arrogant, and harder to effectively punish.

I hope that the Justice Department will inflict meaningful punishment upon Microsoft. I hope that the currently proposed settlement is not enacted; it seems to me to be nothing more than Public Relations window dressing intended to hide the fact that the Justice Department cannot effectively enforce the law upon a wealthy company. Please don't prove yet again that Money Talks, and that Microsoft is above the law.

Thank you for your time and attention.

Sincerely,

(signed) John D. Hardin
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